
BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

TIMOTHY V. PROVOST

ORDER

Docket No. 2015-152 LC

Enf. no. 3709

Judge Gregory Soderberg, J.D.
Administrative Law Judge

BY THE PRESIDING OFFICER:

This matter is before the Presiding Officer on Timothy V. Provost's application for an individual resident producer license. Mr. Provost applied for licensure on December 7, 2015. His application was denied on December 15, 2015 by the Insurance Department, for demonstrating untrustworthiness or financial irresponsibility in the conduct of business. The Department's denial was based on Mr. Provost's 2012 guilty pleas to multiple misdemeanor counts for attempting to sell securities while not licensed to do so. (Court docket, Ex. 4.)

A formal hearing was held on this matter on January 26, 2016. The Department and Mr. Provost presented evidence and argument, and now, being fully informed and for the reasons below, the Presiding Officer SUSTAINS the Department's Letter of Denial.

Evidence and Argument Presented at Hearing

The facts here are not in dispute: the parties agree that Mr. Provost pled guilty to six counts of misdemeanor charges of attempting to sell securities while not licensed to do so. The central issue is whether the charges and underlying facts demonstrate untrustworthiness and financial irresponsibility.

At the hearing, the Department called Randy Overstreet, Director of the Producer Licensing Division, as a witness, and submitted as evidence Mr. Provost's application, the Department's denial letter, a letter written by Mr. Provost, and the court docket from the case against Mr. Provost. The Department argued that Mr. Provost does not meet the character requirement to hold a resident producer license, because the criminal charges, guilty pleas, and underlying actions demonstrate untrustworthiness and financial irresponsibility. Utah Code Ann. § 31A-23a-111(5)(b)(xvi). The charges against Mr. Provost arise out of an investment company that solicited individuals to invest and become partners, and then invested the money raised in other opportunities. (Letter from Mr. Provost, pp. 1-3, Ex. 3.) One of the companies in which Mr. Provost's company invested was eventually discovered to be a Ponzi scheme, and charges were filed against that company's executives, as well as Mr. Provost and the other managing director of his company. (*Id.*)

Mr. Provost testified that the investment company he was part of was deceived by the business in California that was operating as a Ponzi scheme, and that he was counseled by a lawyer that they did not need to register with the Division of Securities. Mr. Provost emphasized that he has always been a trustworthy and financially responsible person, that he had himself been deceived, and that he had learned a lot from his experiences.

Findings of Fact

I find by a preponderance of evidence the following facts:

1. The applicant, Timothy V. Provost, applied for licensure as a resident producer on December 7, 2015.
2. Mr. Provost's application was denied on December 15, 2015.

3. Mr. Provost's application was denied for demonstrating untrustworthiness or financial irresponsibility in the conduct of business. Utah Code Ann. § 31A-23a-111(5)(b)(xvi).

4. The criminal charges that Mr. Provost pled guilty to are serious financial crimes, and occurred less than four years ago. The amount of restitution in the case was almost \$2.5 million (reduced to \$40,000 based on Mr. Provost's income circumstances), and as part of Mr. Provost's 36-month probation, the Court ordered him not to participate in or form any business entity where funds are solicited, sold, or offered for sale. (Court docket pp. 22–23, Ex. 4.)

Standard

An applicant for a resident producer's license must show that he is trustworthy. Utah Code Ann. § 31A-23a-107(2)(a). The Commissioner of Insurance may deny a license application if the Commissioner finds that the individual, in the conduct of business, demonstrates untrustworthiness or financial irresponsibility. *Id.* § 31A-23a-111(5)(b)(xvi).

Conclusions of Law

5. Mr. Provost's criminal history and underlying actions demonstrate untrustworthiness and financial irresponsibility, because of the serious financial nature of the crimes, their impact on the community, and the short time since they occurred. (¶ 4 *supra*.)

6. Because Mr. Provost's actions and history demonstrate untrustworthiness and financial irresponsibility, he fails to meet the trustworthiness requirement for licensing. *Id.* § 31A-23a-107.

Order

Based on the above Findings of Fact and Conclusions of Law, the Department's Letter of Denial is SUSTAINED.

DATED January 28, 2016.

TODD E. KISER
Insurance Commissioner



Gregory Soderberg, Presiding Officer
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114
Telephone (801) 530-6706
Email: gsoderberg@utah.gov

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. § 63G-4-401 and Administrative Rule 590-160. Failure to seek agency review shall be considered a failure to exhaust administrative remedies. Utah Admin. Code r.590-160-8; Utah Code Ann. § 63G-4-403.

JUDICIAL REVIEW

Judicial review of this Order may be obtained by filing a petition consistent with Utah Admin. Code r.590-160-8 and Utah Code Ann. § 63G-4-403.

CERTIFICATE OF SERVICE

On January 28th, 2016 a copy of the foregoing ORDER was sent to:

Timothy V. Provost
2046 Whisper Wood Dr.
Lehi, Utah 84043

Gary Josephson
gjosephson@utah.gov

Linda Hardy